A

ROSLI DAHLAN

v.

KERAJAAN MALAYSIA & ORS

B

HIGH COURT MALAYA, KUALA LUMPUR
ALIZATUL KHAIR OSMAN J
[JUDICIAL REVIEW NO: R2-25-315-2007]
28 MARCH 2011

C ***ADMINISTRATIVE LAW:*** *Remedies - Certiorari - Application for leave to quash notices requiring information issued by DPP under s. 32(1)(b) Anti-Corruption Act 1997 - Whether effect of orders prayed for would extinguish substratum of charge and render criminal charge baseless - Whether an abuse of court's jurisdiction - Whether notices issued* D *were part and parcel of criminal investigation - Whether reviewable under O. 53 Rules of the High Court 1980*

CONSTITUTIONAL LAW: *Courts - Jurisdiction - Whether civil courts can interfere with matters within jurisdiction of criminal courts - Whether investigative powers of Attorney General not subject to review -* E *Rules of the High Court 1980, O. 53 - Anti-Corruption Act 1997, s. 32(1)(b)*

This was an application by the applicant for leave to institute judicial review proceedings against the respondents under O. 53 of F the Rules of the High Court 1980 ('RHC'), *inter alia,* (i) to quash a letter issued by the DPP in refusing to disclose the facts and particulars forming the basis upon which the applicant was purportedly identified as an associate of one Ramli Yusuff and (ii) to quash the two notices (s. 32(1)(b) notices) issued by the DPP G under s. 32(1)(b) of the Anti-Corruption Act 1997 ('the said Act'). The applicant, an advocate and solicitor, was involved in providing legal advice to the said Ramli Yusuff, the then Director of the Commercial Crime Investigation Department of the Royal Malaysian Police Force. On 17 July 2007, the applicant was H served with a notice ('the first notice') issued by the DPP requiring the applicant to furnish certain information. The applicant *vide* letter dated 10 August 2007 sought for an extension of time. In reply, the DPP issued the applicant with a notice dated 16 August 2007 ('the second notice'). Upon receiving the second I notice, the applicant wrote a letter to the DPP seeking clarification over several matters stated in the letter. In reply, the DPP, in a letter (exh. RD6) stated that he was not at liberty to respond to

certain requests from the applicant as they concerned issues that were currently being investigated. Subsequently, the applicant was charged under s. 32(2) of the said Act for failing to comply with the said two notices. The applicant's application herein was premised primarily on the validity, legality and effect of the first and second notice; and the DPP's exercise of his powers of issuing the said notices under the said Act. The Attorney General ('the AG'), however, had raised the following objections, *ie*, (i) that the civil courts should not interfere with matters which were within the jurisdiction of the criminal courts and (ii) that the Attorney General's investigative powers were not subject to review.

Held (dismissing applicant's application; upholding AG's objections):

(1) The applicant's prayer for an order that the court direct the DPP to disclose the particulars of the investigation was clearly an abuse of the process of court as the applicant was seeking *vide* such order to gain access to particulars of the investigation prior to the commencement of the criminal trial itself. Such an application was clearly untenable. Further, as the charge under s. 32(2) of the said Act was for non-compliance with the second notice, it followed logically that once the said second notice itself was declared null and void, the charge (of non-compliance with the said second notice) would be rendered ineffectual and unsustainable. In other words, the effect of the orders prayed for by the applicant would be to extinguish the substratum of the charge and render the criminal charge as baseless. This was clearly an abuse of the court's civil jurisdiction as it would tantamount to this court, a civil court, interfering with the proceedings in the criminal court (*Government of Malaysia v. Lim Kit Siang*; refd, *Tan Sri Eric Chia v. Attorney General*; refd). This court being a civil court had no jurisdiction to review proceedings before the criminal court in exercising its criminal jurisdiction. (paras 46-47 & 49-50)

(2) In issuing the said notices, the DPP was merely performing his duty under s. 32(1)(b) of the said Act, and as such he could not be made accountable by way of judicial review. The said notices were part and parcel of the criminal investigation into an offence under s. 11(a) of the said Act. Since the said notice(s) issued by the DPP was not an administrative decision, but was part of a criminal investigation, it was not reviewable under O. 53 of the RHC. If the notice issued for

the purpose of criminal investigations is reviewable by the court, it will lead to an untenable situation whereby all decisions and actions of the enforcement agencies in securing evidence for the purpose of criminal investigations and prosecutions will be subject to the scrutiny of the courts. This is clearly against public interest and policy. (paras 52 & 56-57)

Case(s) referred to:

Ahmad Azam Mohamed Salleh & Ors v. Jabatan Pembangunan Koperasi Malaysia & Ors v. Jabatan Pembangunan Koperasi Malaysia & Ors [2004] 4 MLJ 86 ***(refd)***

Council of Civil Service Unions v. Minister for Civil Service [1985] 1 AC 374 ***(refd)***

Government of Malaysia v. Lim Kit Siang & Another Case [1988] 1 CLJ 219; [1988] 1 CLJ (Rep) 63 SC ***(refd)***

Hill v. Chief Constable of West Yorkshire [1989] AC 53 ***(refd)***

R v. Sloan [1990] 1 NZLR 474 ***(refd)***

Tan Eng Chye v. The Director of Prisons (No 2) [2004] SLR 521 ***(refd)***

Tan Sri Eric Chia v. Peguam Negara [2005] 5 CLJ 450 HC ***(refd)***

Legislation referred to:

Anti-Corruption Act 1997, ss. 11(a), 32(1)(b), (2)

Co-operative Societies Acts 1993, s. 67

Rules of the High Court 1980, O. 53 rr. 2(4), 3(1), (6)

For the applicant - Porres Royan (Harvinderjit Singh with him); M/s Kumar Partnership

For the respondent - Hjh Azizah Nawawi SFC

Reported by Suhainah Wahiduddin

JUDGMENT

Alizatul Khair Osman J:

[1] This is an application by the applicant for leave to institute judicial review proceedings against the abovenamed respondents under O. 53 of the Rules of the High Court 1980 (RHC). The orders sought by the applicant are as follows:

(i) an order for *certiorari* to quash the letter dated 14 September 2007 issued by En Anthony Kevin Morais (the DPP) and received by the applicant on 17 September 2007, in refusing to disclose the facts and particulars forming the basis upon which the applicant was purportedly identified as an associate of one Ramli bin Yusuff;

(ii) an order for *certiorari* to quash the two notices dated 17 July 2007 and 16 August 2007 (s. 32(1)(b) notices) issued by the DPP under s. 32(1)(b) of the Anti-Corruption Act 1997 (the said Act).

(iii) a declaration that the s. 32(1)(b) notices are defective, invalid, unlawful and subsequently null and void and of no effect;

(iv) an order that the s. 32(1)(b) notices be set aside;

(v) an order for *mandamus* directing the 2nd respondent to provide the facts and particulars forming the basis upon which the applicant was purportedly identified as an associate of Ramli bin Yusuff;

(vi) damages.

[2] The applicant is also seeking an order for extension of time to file the application under O. 53 r. 3(6) of the Rules of the High Court 1980.

Brief Facts

[3] The applicant is an advocate and solicitor of the High Court of Malaya and currently practicing as a partner in the law firm of Messrs Lee Hishamuddin Allan & Gledhill. He was at the material time, in his capacity as a legal practitioner involved in providing legal advice to the said (Dato') Ramli bin Yusuff the then Director of the Commercial Crime Investigation Department of the Royal Malaysian Police Force.

[4] On 17 July 2007, the applicant was served with a notice dated 17 July 2007 (the 1st notice) issued by the DPP. The 1st notice (exh. "RD1"), was issued under s. 32(1)(b) of the said Act requiring the applicant to furnish certain information itemized in paras. (i) to (vi) in para. 2 of the said 1st notice. It is stated that failure to comply with the said 1st notice attracts criminal penalty under s. 32(2) of the said Act.

[5] *Vide* letter dated 10 August 2007, the applicant wrote to the DPP seeking an extension of time to respond to the said 1st notice (exh. "RD3").

[6] In reply to the applicant's request, the DPP on 21 August 2007 issued to him a notice dated 16 August 2007 (the 2nd notice). The 2nd notice, exh. ("RD2"), was issued under s. 32(1)(b) of the said Act requiring the applicant to furnish

certain information itemized in paras. (i) to (vi). In para. 2 of the 2nd notice, it is stated that the extension of time requested by the applicant was allowed and he was required to submit the information 30 days from the date the said 2nd notice was served on him. In para. 3 of the 2nd notice, it is stated that failure to comply with the said 2nd notice attracts criminal penalty under s. 32(2) of the said Act.

[7] Upon receiving the 2nd notice, the applicant wrote a letter dated 24 August 2007 to the DPP seeking clarification over several matters stated in the letter. As no reply was forthcoming, the applicant wrote another letter to the DPP on 4 September 2007 seeking a response to his earlier letter.

[8] In reply to the applicant's letters, the DPP, in a letter dated 14 September 2007 (exh. "RD6"), stated that he was "not at liberty to respond to certain requests of yours in the said letters as they concern issues that are currently being investigated."

[9] On 21 September 2007, the applicant served on the Anti-Corruption Agency (ACA) a statement under oath pursuant to s. 32(1) of the said Act.

[10] On 12 October 2007, the applicant was charged for an offence under s. 32(2) of the said Act.

[11] On 26 October 2007, the applicant filed this application.

[12] The grounds relied on by the applicant are contained in the statement accompanying the application (encl. (2)).

[13] The application is premised primarily on the validity, legality and effect of the 1st notice and 2nd notice; and the DPP's exercise of his powers of issuing the said notices under the said Act.

[14] The Attorney-General, Malaysia (the AG) on whom this application is required to be served under O. 53 r. 3(1) of the RHC, has raised the following objections to the applicant's application for leave *viz*:

(i) that the civil courts should not interfere with matters, which are within the jurisdiction of the criminal courts; and

(ii) investigative powers are not subject to review.

AG's Contention

(i) that the civil courts should not interfere with matters which are within the jurisdiction of the criminal courts

[15] It is the contention of the AG that this application is an abuse of the process of the court as the applicant is asking this court, a civil court exercising its administrative law function, to review the basis of the criminal charges against the applicant in the criminal courts.

[16] It is not disputed that the criminal charge under s. 32(2) of the said Act against the applicant is pending trial in the criminal court (see paras. 7.8 and 7.9 of the applicant's affidavit). It is also not disputed that the basis of the criminal charge under s. 32(2) of said Act is the failure to comply with the notice (2nd notice) issued under s. 32(1)(b) of the said Act.

[17] The applicant is seeking by this application to quash both notices as well as to declare the said notice(s) as null and void. If the applicant is successful in his application, then the sub-stratum of the criminal charge will fail.

[18] In the learned senior federal counsel's (SFC) view this court being a civil court, has no jurisdiction to review the proceedings before the criminal court in exercising its criminal jurisdiction. This matter ought to be examined and determined by the courts in the exercise of its criminal jurisdiction. Whatever issues pertaining to the said notice(s) can be raised during the criminal trial proceedings. According to the learned SFC the applicant is seeking in this application to question and to review the criminal law proceedings in the criminal courts by means of civil proceedings viz by applying for an order of *certiorari*, declaration and mandamus. This application is clearly an abuse of the court's civil jurisdiction thus making it inherently unsuitable for determination by the courts.

[19] Learned SFC referred to the case of *Government of Malaysia v. Lim Kit Siang & Another Case* [1988] 1 CLJ 219; [1988] 1 CLJ (Rep) 63 (*Lim Kit Siang*) whereby the Federal Court recognized the need to keep separate and distinct the court's civil and criminal jurisdictions. The Federal Court in that case held as follows:

> Shorn of any emotional and psychological elements which a complaint of this nature generates, in essence and effect the complaint is an invocation of the court's aid in order to ... enforce

A the criminal law against these three ministers. This raises a constitutional question of great importance involving the position of the Attorney General and the dichotomy between criminal law and civil law.

B In this connection, we must remind ourselves of our true function in this appeal. We are not sitting as a criminal court holding a criminal trial nor are we hearing a criminal appeal. We are also not sitting as a commission of inquiry investigating into the wisdom, malpractices and misdeed of the government and its officials. We are only sitting as an ultimate civil court of appeal C of the nation in which our duty is to deal only with such issues of law and facts as relate and are relevant to the case …

[20] Learned SFC also referred to the decision of the High Court in *Tan Sri Eric Chia v. Peguam Negara* [2005] 5 CLJ 450 (*Tan Sri Eric Chia*) whereby the High Court dismissed the application for D leave and held that the applicant's application for judicial review is an abuse of process, holding that:

This is because, this court being a civil court has no jurisdiction to review the proceedings before the Sessions Court, in exercising E of its criminal jurisdiction … thus, to accede to the applicant's application will tantamount to this court interfering with the jurisdiction of the Sessions Court. To me, this is totally unacceptable.

(ii) 2nd objection – Investigative powers are not reviewable

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[21] On this issue, learned SFC stressed that not all decisions and actions of a public officer is reviewable under O. 53 r. 2(4) of the RHC. If all decisions and actions of the public authority are amenable to review by the courts then the government machinery G may cease to function.

[22] In this regard, the learned SFC argued that in order to ascertain whether a decision is reviewable or not, the court will have to look at the function being performed by the person whose decision is being challenged. For this she relied on *R v. Sloan* H [1990] 1 NZLR 474 where the issue before the court was whether the warning letters issued by the inspectors that Mr Sloan's operation was unlawful is reviewable. The court held that as the functions of the inspectors are merely investigative they are not reviewable. Justice Hardie Boys in his judgment said: I

Secondly, it is not every decision made under statutory authority that is subject to review. A decision must go beyond what is merely administrative or procedural, or the exercise of a function

> rather than a power. Quite plainly, the conclusions reached by the inspectors here are of this kind and so are not reviewable. To hold otherwise would, as Mr Neave submitted, open up the investigative process of all law enforcement agencies to constant judicial review; and that cannot have been the intention of Parliament.

[23] In *Ahmad Azam Mohamad Salleh & Ors v. Jabatan Pembangunan Koperasi Malaysia & Ors* [2004] 4 MLJ 86 (*Ahmad Azam*) Raus J (as he then was) held that where public officers were merely exercising a function under the Act, the same is not reviewable by the court. His lordship *inter alia*, said:

> To hold such a process of inspection reviewable would open up the investigation process of all enforcement agencies to constant judicial review. I have no valid reason to open the floodgate.

The Applicant's Reply

[24] As regards the AG's 1st objection, the applicant's reply is as follows:

[25] Firstly, the applicant does not seek *via* these proceedings to review the basis of the criminal charges which he is purported to have committed. The basis of the criminal charge brought against the applicant is NOT the said notice(s) itself but his alleged failure to comply with the said notice(s).

[26] The applicant is seeking a review of the legality of *inter alia*, the notice(s) and/or the legality of the DPP's decision to issue the notice(s).

[27] The legality of the notice(s) or its issuance cannot according to learned counsel be challenged in the criminal trial and the only avenue is to have the same set aside and/or declared illegal *via* these proceedings. The notice being an administrative act meant that any challenges to its validity must be brought by judicial review and not in the criminal proceedings for failure to comply with the said notice.

[28] In his view, the case of *Lim Kit Siang* has no application to the present facts as it was decided before the coming into effect of the Malaysian O. 53 of the Rules of the High Court 1980, which is in *pari materia* with the former O. 53 of the Rules of the Supreme Court in England.

[29] Counsel was equally of the view that reliance on *Tan Sri Eric Chia* is misconceived as firstly the applicant does not seek this court's assistance to rule on any matter which it is able to raise in the Sessions Court and secondly, as stated above, the applicant is precluded from challenging the said notice(s) or its issuance at the criminal trial and thus compelled to come to this court.

[30] As to the AG's 2nd objection, learned counsel's contention is that the act of issuance of the said notice(s) (ie, the 1st and the 2nd notice) under s. 32(1)(b) is not merely the discharge of a function or a duty by the DPP. Rather it amounts to a decision susceptible to review. Unlike the automotive and mechanical duties of for example an arresting officer, the DPP on the present facts had a choice of whether or not to issue the said notice(s). Based on this choice he made a decision to do so and such a decision affected the rights and obligations of the applicant who would be legally obliged to comply with the notice(s) by disclosing all his assets.

[31] Secondly, the powers under s. 32(1)(b) do not fall within the ambit of investigatory powers as the words of the provision itself make such a decision distinct from, and based on, concluded investigations. The s. 32(1)(b) notice is not merely based on 'information' but on 'investigations'.

[32] The reviewability of the power would not cripple all enforcement agencies. This is because such a provision is specific to only a few agencies including the Anti-Corruption Agency. There is therefore no risk of the 'floodgates' being opened.

[33] Further learned counsel contended that there is no blanket rule that investigatory powers are not reviewable.

[34] The court has the power to remedy the investigatory powers which have been exercised illegally, unlawfully and in excess of the jurisdiction conferred on the ACA by the said Act.

[35] Finally, learned counsel for the applicant reiterated that at his stage, the court need only be satisfied that:

(a) the application is not frivolous nor vexatious;

(b) there exists sufficient evidence to sustain a *prima facie* case that the respondents have acted unlawfully.

[36] Thus, the fact that the applicant has disclosed *prima facie* evidence that the DPP has acted beyond his powers under s. 32(1)(b) and that the notice itself does not accord to the provisions of the Act is sufficient grounds for leave to be granted.

[37] It was also counsel's submission that the argument raised by the AG do not merit refusal of leave for the reasons stated above and he therefore pray that leave be granted.

Decision

[38] After hearing parties and having carefully considered the submissions of both the AG and the applicant counsel, I upheld the AG's objections and dismissed the applicant's application for leave with no order as to costs. My reasons are as follows:

[39] In the present application, the applicant is seeking *inter alia*, to quash the said notice(s) ie, the 1st and 2nd notice issued by the DPP under s. 32(1)(b) of the said Act, which reads as follows:

> 32. Public Prosecutor's powers to obtain information.
>
> (1) Notwithstanding any written law or rule of law to the contrary, the Public Prosecutor, if he has reasonable ground to believe, based on the investigation carried out by an officer of the Agency, that any offence under this Act has been committed, may by written notice –
>
> (a) ...
>
> (b) require any relative or associate of the person referred to in paragraph (1)(a). or any other person *whom the Public Prosecutor has reasonable grounds to believe is able to assist in the investigation,* to furnish a statement in writing on oath or affirmation ... (emphasis added)

[40] The question that arises is whether the legality of the notices issued under s. 32(1)(b) of the said Act which forms the basis of the criminal charge under s. 32(2) and which is pending trial in the criminal court, can be reviewed by this court, a civil court exercising an administrative law function.

[41] The learned SFC argued that by asking this court to quash the said notice(s) and declare them null and void the applicant is in effect asking this court to review the basis of the criminal charge which are now pending before the criminal courts as the 2nd notice forms the basis of the criminal charge against the applicant.

[42] The applicant is also seeking the assistance of this court to gain access to facts and particulars pertaining to the criminal proceedings.

[43] As stated earlier the following facts are not in dispute:

(i) the criminal charge under s. 32(2) of the said Act is pending (at the time of filing of the application) before the criminal courts;

(ii) the basis of the criminal charge under s. 32(2) of the said Act is the applicant's failure to comply with the 2nd notice (issued under s. 32(1)(b)) of the said Act;

[44] Counsel for the applicant argued that the applicant is not by this application seeking to review the basis of the criminal charge. It is no doubt true that the basis of the criminal charge against the applicant is not the said 2nd notice itself but the failure of the applicant to comply with the said notice. However in this application, the applicant is seeking the following orders:

(i) Prayer (b)(i) is an order to quash the letter dated 14 September 2007.

(ii) Prayer b(ii) is an order to quash the two said notices dated 17 July 2007 and 16 June 2007 (s. 32(1)(b) notices) issued by the DPP under s. 32(1)(b) of the said Act.

(iii) Prayer b(iii) is to declare that the s. 32(1)(b) notices are defective, invalid, unlawful and subsequently null and void and of no effect.

(iv) Prayer b(iv) is for an order that the s. 32(1)(b) notices be set aside.

[45] In my view, if the court were to grant the orders prayed for and set aside the said notice(s) then the basis for the criminal charge under s. 32(2) will no longer exist.

[46] As the charge under s. 32(2) of the said Act is for non-compliance with the said 2nd notice, it follows logically that once the said 2nd notice itself is declared null and void, the charge (of non-compliance with the said 2nd notice) would be rendered ineffectual and unsustainable. In other words, the effect of the orders prayed for by the applicant would be to extinguish the sub-stratum of the charge and render the criminal charge as baseless.

[47] I agree with learned SFC that this is clearly an abuse of the court's civil jurisdiction as it would tantamount to this court, a civil court interfering with the proceedings in the criminal court. On the authority of both *Lim Kit Siang and Tan Sri Eric Chia (supra)*, such a situation is clearly untenable.

[48] In fact in K25-31-2005 *David Chong Tai Kim v. Officer In Charge Of The Police Department and 2 Ors*, Sulong Matjaraie J (as he then was) in accepting the principle espoused in Tan Sri Eric Chia said:

> It is untenable that criminal law should be enforced by means of civil proceedings. It would cause havoc to the legal system in the country.

[49] This court being a civil court has no jurisdiction to review proceedings before the criminal court in exercising its criminal jurisdiction. As submitted by the learned SFC whatever issues pertaining to the said notice(s) can and ought to be raised during the criminal trial proceedings for the criminal court to examine and determine on the exercise of its criminal jurisdiction.

[50] In addition, the applicant's prayer for an order that the court direct the DPP to disclose the particulars of the investigation is clearly an abuse of the process of court as the applicant is seeking *vide* such order to gain access to particulars of the investigation prior to the commencement of the criminal trial itself. For the same reasons stated earlier, such an application is certainly not tenable.

[51] As to the 2nd objection raised by the AG, in the said notice(s) it is stated that there was an investigation into a criminal offence under s. 11(a) of said Act, committed by the said Ramli bin Yusuff. For the purpose of the said investigations, the DPP issued the said notice(s) to the applicant for the latter to furnish the relevant information.

[52] Firstly, in my view in issuing the said notice(s) the DPP was merely performing his duty under s. 32(1)(b) of the said Act, and as such he cannot be made accountable by way of judicial review. The case of *Ahmad Azam (supra)* refers. The applicant sought to distinguish the facts of *Ahmad Azam* from the present case by saying that when he issued the said notice(s) to the applicant, the DPP was not merely exercising a function or duty unlike the

Ketua Pendaftar in *Ahmad Azam* who was merely exercising "his statutory function as a public body entrusted by Parliament to oversee the workings of registered societies under the Act ... (p. 93, *Ahmad Azam*).

[53] With due respect to learned counsel, I do not see the distinction between the function or duty exercised by the DPP in the present case and the function exercised by the Ketua Pendaftar in *Ahmad Azam* such as to render the former a decision and the latter merely a "function or duty". Both the DPP and the Ketua Pendaftar were carrying out their functions pursuant to the powers conferred on them by their respective laws, the former under s. 32(1)(b) of the said Act and the latter under s. 67 of the Co-operatives Societies Acts 1993.

[54] In *Council of Civil Service Unions v. Minister for Civil Service* [1985] 1 AC 374, Lord Diplock reiterated that judicial review "provides the means by which judicial control of administrative action is exercised." His Lordship added:

> For a decision to be susceptible to judicial review, the decision maker must be empowered by public law (and not merely, as in arbitration, by agreement between private parties) to make decisions that, if validly made, will lead to administrative action or abstention from action by one authority endowed by law with executive powers.

[55] In *Tan Eng Chye v. The Director of Prisons (No. 2)* [2004] SLR 521, an application for leave to quash Dr Ooi's certification for caning was dismissed on the grounds that it is not susceptible to judicial review. Justice Choo Tan Teck held that not every act or conduct of a public servant is justiciable by way of judicial review. As opined by his lordship:

> This report by Dr. Ooi was obviously a "decision" but that alone did not make Dr. Ooi a "decision maker" in the sense explained by Lord Diplock's judgment above ... Dr. Ooi was a public servant discharging what I might call a "non-decision making" duty in the Diplock sense. Further examples of non-decision making conduct include acts of police officers such as in the arrest of a person suspected of committing an offence. Such decisions of an arresting officer are not amenable to judicial review. The rights of the arrested person lie in the criminal, as well as civil, law – not in an administrative action ...

His lordship went on further to hold that:

> Every public officer will have made numerous decisions on a daily basis. They cannot all be accountable for each and every one of those decisions in an administrative action, even if they affect another person or body of persons, otherwise the entire apparatus of public service might cease to function.

[56] Secondly, the said notice(s) were part and parcel of the criminal investigation into an offence under s. 11(a) of the said Act. Since the said notice(s) issued by the DPP is not an administrative decision, but is part of a criminal investigation, it is not reviewable under O. 53 of the RHC.

[57] If the notice issued for the purpose of criminal investigations is reviewable by the court, it will lead to an untenable situation where by all decisions and actions of the enforcement agencies in securing evidence for the purpose of criminal investigations and prosecutions will be subject to the scrutiny of the courts. This is clearly against public interest and policy. In *Hill v. Chief Constable of West Yorkshire* [1989] AC 53 the House of Lords held at p. 244:

> The manner of conduct of such an investigation must necessarily involve a variety of decisions to be made on matters of policy and discretion, for example as to which particular line of inquiry is most advantageously to be pursued and what is the most advantageous way to deploy the available resources. Many such decisions would not be regarded by the courts as appropriate to be called in question, yet elaborate investigations of the facts might be necessary to ascertain whether or not this was so. A great deal of police time, trouble and expense might be expected to have to be put into the preparation of the defence to the action and the attendance of the witnesses at the trial. The result would be significant diversion of police's manpower and attention from their most important function, that of the suppression of crime.